

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EATON CORPORATION,

Plaintiff,

Case No. 03-74844

v.

District Judge George Caram Steeh

Magistrate Judge R. Steven Whalen

ZF MERITOR LLC., ARVINMERITOR
INC., and ZF FRIEDRICHSHAFEN AG,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTION TO COMPEL DISCOVERY**

Before the Court is Defendants' Motion to Compel Plaintiff's Discovery Responses [Docket #36], which has been referred for hearing and determination pursuant to 28 U.S.C. §636(b)(1)(A). For the reasons and under the terms stated on the record on March 7, 2006, the Motion is GRANTED IN PART AND DENIED IN PART, as follows:

1. The motion to produce responses to Defendants' Interrogatories 1 and 3 is DENIED. However, the motion for Plaintiff to produce a 30(b)(6)¹ witness regarding infringement (Category 13) is GRANTED.

2. As to Defendants' Interrogatory No. 5, the motion is DENIED. As to Defendant's Document Requests 1 and 2, the motion is GRANTED. If Plaintiff has already produced

¹ Fed.R.Civ.P. 30(b)(6).

documents from any other proceeding, including the prior proceeding before the International Trade Commission (ITC), Plaintiff will specifically identify, by Bates number or otherwise, where the responsive documents will be found.

3. As to Defendants' Interrogatory No. 7, the motion is GRANTED. As to Interrogatory No. 8, the motion is DENIED AS MOOT on Plaintiff's representation that it has already responded with documents, as provided for in Fed.R.Civ.P. 33(d). However, Plaintiff will specifically identify, by Bates number or otherwise, where the responsive documents will be found.

As to Document Request No. 49, the motion is DENIED.

Plaintiff will provide a 30(b)(6) witness as to Categories 9 and 10, directed at prior art searching.

4. As to Interrogatories 10, 12 and 14, the motion to compel supplemental responses is DENIED. However, as to material the Plaintiff has already provided in response to these interrogatories, pursuant to Rule 33(d), Plaintiff shall specifically identify, by Bates number or otherwise, where the responsive documents will be found.

5. As to Interrogatory No. 17, the motion is DENIED. However, Plaintiff will provide a 30(b)(6) witness as to Category 19 (communications with AMT purchasers relative to the patents in suit).

6. As to Document Request No. 4, the motion is GRANTED. If documents from other proceedings, including the ITC proceeding, are or have been produced in response, Plaintiff will specifically identify, by Bates Number or otherwise, where the responsive documents will

be found. Plaintiff will include any responsive material as to which the ITC ruled attorney-client or work product privilege was waived. As to any other material for which Plaintiff claims privilege, Plaintiff will provide a privilege log.

Plaintiff will also provide a 30(b)(6) witness regarding Categories 12 and 20 (Plaintiff's pre-filing investigation).

7. As to Document Requests 77-80 and 85-86, the motion is GRANTED. If documents from other proceedings, including the ITC proceeding, are or have been produced in response, Plaintiff will specifically identify, by Bates Number or otherwise, where the responsive documents will be found.

Plaintiff shall provide a 30(b)(6) witness as to Categories 23-26, 29-35 and 38 (Plaintiff's sales, financials, pricing and marketing of Plaintiff's patented AMTs).

8. As to Document Requests 83 and 84, the motion is GRANTED as to the time periods both before and after the commencement of the lawsuit.

SO ORDERED.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: March 10, 2006

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on March 10, 2006.

S/Gina Wilson
Judicial Assistant